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Supreme Court, U.S.
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IN THE

Supreme Court of the United States

SAN REMO HOTEL, L.P., *et al.*,

Petitioners,

v.

CITY AND COUNTY OF SAN FRANCISCO, *et al.*,

Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF OF THE STATES OF NEW JERSEY, COLORADO, DELAWARE, HAWAII, MARYLAND, MISSOURI, MONTANA, OKLAHOMA AND WEST VIRGINIA AS *AMICI CURIAE* IN SUPPORT OF THE RESPONDENTS

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QUESTION PRESENTED

Is a Fifth Amendment Takings claim barred by issue preclusion based on a judgment denying compensation solely under state law, which was rendered in a state court proceeding that was required to ripen the federal Takings claim?

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INTEREST OF AMICI CURIAE

The States have a critical, constitutional interest in upholding our federal system, as embodied in the Full Faith and Credit Clause, Art. IV, §1, of the United States Constitution, enacted through the Full Faith and Credit Act, 28 U.S.C. §1738. A federal court should apply the Full Faith and Credit Act to preclude relitigation of a regulatory takings claim after a state court has issued a final judgment on the merits of the identical issues, if the state law is at least as protective of constitutionally recognized property rights as federal law. This is particularly critical in states whose laws prohibit claim splitting. Petitioners' contrary argument would encourage duplicative relitigation of issues already decided in the state courts, establishing the federal courts as courts of review over the state courts, contrary to constitutional principles and in violation of the Rooker-Feldman doctrine and principles of *res judicata* and collateral estoppel. The lower federal courts lack subject matter jurisdiction to review the final judgment of a state court.

Taking claims involve a very labor-intensive and fact-sensitive inquiry, as required by Penn Central and its progeny. Duplicative litigation of compensation issues that already have been litigated in the state courts would place upon State and local governments a tremendous financial burden that would contradict our federal system and could obstruct the fundamental ability of local and state governments to make decisions regarding local land use concerns.

The petitioners' theory, if adopted by this Court, would undermine the Full Faith and Credit Act and the federalism principles it represents, forcing government entities into duplicative relitigation of issues already decided in the State courts. This action also concerns State *amici* because the case below involves petitioners' second federal

court filing of issues and claims that already were litigated in both federal and state court, as well as forum shopping tactics that already have consumed inordinate public resources.

STATEMENT OF THE CASE

State *amici* rely upon the statement of procedure and facts set forth by the California Supreme Court in San Remo Hotel v. City and County of San Francisco, 27 Cal.4th 643 (2002), and the additional procedure and facts set forth by the Ninth Circuit Court of Appeals in San Remo Hotel v. San Francisco City and County, 364 F.3d 1088 (2004).

Despite voluntarily filing the first action in federal court, in their 1997 initial appeal to the Ninth Circuit, 145 F.3d 1095, petitioners argued for the first time that, after all, the district court should not have decided the taking claim but instead should have abstained until resolution of a state court litigation. The Ninth Circuit abstained to allow the state courts to decide whether the hotel was residential or commercial, under the San Francisco ordinance. The Ninth Circuit did not direct or expect petitioners to litigate their takings claim, under federal or state law, in the state court. After litigating the same issues unsuccessfully in the state courts, up to and including the California Supreme Court, petitioners brought their taking claim back again to the federal court based upon the very same facts. The district court dismissed petitioners' claims as time-barred but indicated that, if it were to rule on the merits, it would find in favor of San Francisco. Petitioners then appealed to the Ninth Circuit for a second time in 2004, 364 F.3d 1088. The Ninth Circuit noted that California state takings law is equivalent to federal takings law, and affirmed under principles of issue preclusion.

SUMMARY OF THE ARGUMENT

The Full Faith and Credit Act bars relitigation of a regulatory taking claim in federal court where a competent state court already has adjudicated the state and federal claims. Principles of federalism, as well as principles of *res judicata* and collateral estoppel, preclude a duplicative collateral attack upon the final decision of a state court, which under these circumstances, is not a right recognized under England v. Louisiana State Board of Medical Examiners, 375 U.S. 411 (1964). As long and repeatedly noted by this Court, state courts are perfectly capable of adequately addressing and protecting rights guaranteed under federal law.

Relitigating regulatory taking claims in federal court, where the state court allows litigation of the federal claim or where the claimant litigates its compensation claim under state law standards that are equivalent to federal law standards, would be both prohibitively burdensome upon State resources and would infringe improperly upon the sovereignty of the States. All issues that were or could have been litigated in state court should be binding upon the claimant. Moreover, a federal-law based taking claim that was litigated under state law, which is at least as protective of constitutionally recognized rights as federal law, should preclude relitigation of the same claim in federal court. If state law prohibits claim splitting, the federal courts must accord the judgments of those state courts the same preclusive effect as judgment s of the federal courts. State *amici* respectfully ask the Court to affirm the judgment below and its holding that an England reservation does not allow relitigation of a taking claim that already has been fully litigated in State court under equivalent legal standards.

Once a state court of competent jurisdiction has

reviewed and ruled upon a federal claim, the lower federal courts lack subject matter jurisdiction over that claim. Moreover, a reservation of rights under England is not effective when the federal court does not have jurisdiction, as in the case of an unripe claim, or in the absence of a Pullman reservation. In any event, England does not change the subject matter jurisdiction of the lower federal courts. Accordingly, an England reservation will not allow duplicative litigation in federal court of a taking claim that has been fully litigated in a state court.

This Court has consistently ruled that adjudication of a regulatory taking claim involves an *ad hoc* factual analysis. Penn Central Trans. Co. v. New York City, 438 U.S. 104, 124 (1978). Thus, litigating a federal-law based taking claim requires intensive discovery, often including multiple depositions, voluminous document production and review; preparing, analyzing and revising land use plans; preparing expert reports and taking expert testimony on the conditions of and uses for a property; and preparing and analyzing appraisals of property values. The same discovery is required to litigate a state-law based inverse condemnation claim. Due to their obligations under the Fifth Amendment, the state courts must be at least as protective of constitutionally recognized rights when litigating a claim for compensation under state law as they must when litigating a taking claim under federal law, and as a federal court must when litigating a taking claim.

The determination by a state court under state law of whether a claimant is entitled to compensation as a result of a regulatory activity should entirely resolve all issues material to the federal law taking claim. Otherwise, the federal court will require either the duplication of a typically very lengthy and labor-intensive litigation, or the filing of summary

judgment motions under federal law that will apply standards equivalent to the state court's decision under state law. The exercise of completely relitigating the case in federal court is time-consuming and expensive; to do so more than once would be both oppressive and legally groundless. The alternative of inviting a federal court ruling applying the equivalent legal standard merely invites inconsistent rulings by the state and federal trial courts, an outcome that the Full Faith and Credit Act prohibits.

The course argued by petitioners would intimidate local and state governments with the specter of endless litigation of claims that already have been fully litigated in a state court under substantively identical law. Ultimately, petitioners would impose further burdens on the tax-paying citizenry. Citizens would bear the burdens of either paying to repeatedly defend the regulatory actions of their state and local governments, after their state courts had found them constitutional by applying a federally equivalent legal review, or enduring the diminution of the power of their own elected government to decide appropriate land uses in their communities. Our federalist system prohibits such duplicative litigation and intrusion into state sovereignty.

ARGUMENT

1. THE FULL FAITH AND CREDIT ACT BARS RELITIGATION OF A TAKING CLAIM IN FEDERAL COURT WHERE THE STATE COURT ALREADY HAS ADJUDICATED THE SAME CLAIM UNDER EQUIVALENT LEGAL STANDARDS.

Federal courts must give preclusive effect to state-court judgments whenever courts of the State from which the judgments emerged would do so:

> [J]udicial proceedings [of any court of any State] shall have the same full faith and credit in every court within the United States and its Territories and Possessions as they have by law or usage in the courts of such State ....

28 U.S.C. §1738; Allen v. McCurry, 449 U.S. 90, 95 (1980).

The federal courts have consistently accorded preclusive effect to state court judgments, because *res judicata* and collateral estoppel not only reduce unnecessary litigation and foster reliance on adjudication, but also promote the comity between state and federal courts that has been recognized as a bulwark of the federal system. See Younger v. Harris, 401 U.S. 37, 43-45 (1971).

Thus, the Full Faith and Credit Act prohibits duplicative litigation of a matter already fully litigated in a state court under equivalent legal standards. The purpose of

the Full Faith and Credit Act is to further our federalist form of government. Application of the Act on the facts presented here is both fair and consistent with this Court's jurisprudence.

In Allen v. McCurry, this Court specifically found that "nothing in the language or legislative history of [42 U.S.C.] §1983 proves any congressional intent to deny binding effect to a state-court judgment or decision when the state court, acting within its proper jurisdiction, has given the parties a full and fair opportunity to litigate federal claims, and thereby has shown itself willing and able to protect federal rights." 449 U.S. at 103-104. This Court has extended Allen to find that it precludes the federal courts from considering any claim that could have been brought in state court but was not asserted there, applying the traditional doctrine of collateral estoppel. Migra v. Warren City School Dist. Board of Ed., 465 U.S. 75, 83-85 (1984). In Migra, this Court explained:

> Although [giving state-court judgments issue preclusive but not claim preclusive effect] may seem attractive from a plaintiff's perspective, it is not the system established by §1738. That statute embodies the view that it is more important to give full faith and credit to state-court judgments than to ensure separate forums for federal and state claims. This reflects a variety of concerns, including notions of comity, the need to prevent vexatious litigation, and a desire to conserve judicial resources.

Id., 465 U.S. at 84.

Since the Fifth Amendment requires that litigation of a compensation claim in state court must be at least as protective of constitutionally recognized rights as federal law, the state court will determine the substance of the taking claim. Relitigating the legally equivalent claim in federal court would place form over substance, and would risk contradictory results based on essentially the same legal standard. See Dodd v. Hood River County, 59 F.3d 852, 863 (9th Cir. 1995) (collateral estoppel bars federal takings claim if state court's earlier decision on state law takings claim was "an equivalent determination under the federal taking clause"); see also Sterk, Stewart R., "The Federalist Dimension of Regulatory Takings Jurisprudence," 114 Yale L.J. 203, n.181, Nov. 2004. Thus, the California Supreme Court should not have allowed petitioners to "reserve," see San Remo Hotel, 27 Cal. 4th at 649 n. 1, any of the federal causes of action that could have been litigated in the California state courts.

This Court should affirm that the Full Faith and Credit Act prohibits the relitigation in federal court of state or federal claims that have been litigated, or could have been litigated, in the state courts. Under the Supremacy Clause, Art. VI, Cl.2, of the United States Constitution, state courts must apply federal law and respect governing federal precedent. This Court has held that state courts of appropriate jurisdiction must adjudicate federal claims whenever a federal statute requires them to do so. See Testa v. Katt, 330 U.S. 386 (1947). Moreover, under the Supremacy Clause, "state courts cannot refuse to apply federal law." See Printz v. United States, 521 U.S. 898, 928-929 (1997). The critical importance of the Full Faith and Credit Act to our federalist system is perhaps clearest in those state courts that expressly allow litigation of federal claims and also prohibit claim splitting, requiring each party to assert

any claim that can be litigated in that forum. See e.g., R. 4:30A (New Jersey entire controversy doctrine court rule); Woodward-Clyde Consult. v. Chemical and Pollution Sciences, Inc., 105 N.J. 464 (1987).

This Court has recognized that there is no basis to think that the state courts cannot properly apply federal law. U.S. Const., Art. VI, Cl. 2, see Allen, 449 U.S. at 105; McCulloch v. Maryland, 17 U.S. (4 Wheat.) 316, 436 (1819). Of course, collateral estoppel will not apply when the party against whom the earlier decision is asserted did not have a "full and fair opportunity" to litigate that issue in the state court, Allen, 449 U.S. at 95, or when the state court did not apply "equivalent" law, San Remo 364 F.3d at 1096, 27 Cal.4th at 663-64, i.e. law that is at least as protective of constitutionally recognized rights as federal law. However, if a state court does not properly respect federal takings law, the recourse should be to seek review through *certiorari* to this Court, not to relitigate the claim in the federal district court.

2. A RESERVATION OF RIGHTS UNDER ENGLAND DOES NOT ALLOW DUPLICATIVE LITIGATION IN FEDERAL COURT OF A TAKING CLAIM THAT HAS BEEN FULLY LITIGATED IN A STATE COURT, AND WHICH WOULD BE UNNECESSARILY BURDENSOME ON STATE AND LOCAL GOVERNMENTS AND BOTH COURT SYSTEMS.

In England v. Louisiana State Board of Medical Examiners, 375 U.S. 411 (1964), this Court neither recognized nor conferred the right to collaterally attack a final

decision of a State court of competent jurisdiction. In England, a three-judge panel abstained *sua sponte* under the doctrine in Railroad Comm'n of Texas v. Pullman Co., 312 U.S. 496 (1941), from considering Fourteenth Amendment due process and equal protection claims since their resolution depended upon an unsettled question of Louisiana state law.

This Court should not extend the England decision to takings cases. Rather, this Court should clearly reassert that, where a claim under federal law can be fully litigated in state court, then the circumstances that would justify an England reservation are not present and the Full Faith and Credit Act, and principles of federalism, *res judicata* and collateral estoppel, prohibit such duplicative and burdensome litigation.

This Court decided England before deciding, in Allen and Migra, that the Full Faith and Credit Act prohibits relitigation in federal court of an equivalent claim that has been fully and fairly litigated in state court under state law that meets the minimum standards of federal law. Full and fair litigation of a claim for compensation under state law, where the legal standard is at least as protective of constitutionally recognized rights as federal law, will resolve the substance of the federal-law taking claim as well. If the claimant has the opportunity to litigate all issues in state court, and can litigate its claims under equivalent legal standards, then no unresolved federal claim should remain. Thus, a claimant should not be allowed to pursue a "second bite at the apple" in federal court, with duplicative litigation or a legal determination under federal law of a claim that the state court has decided under substantively identical state law.

There is no reason to relitigate a taking claim in federal court after its complete litigation in a state court. As this Court recognized in England, duplicative litigation unnecessarily increases the length and cost of litigation and is a potential source of friction between the state and federal judiciaries. Duplicative litigation also can disrupt "the harmonious relation between state and federal authority," England, 375 U.S. at 421 n. 12, and can create "the possibility of unwarranted disruption of a state administrative process." Id. at 415 n. 5.

Moreover, petitioners essentially argue that they are entitled to a new trial, in federal court, whenever they obtain an adverse ruling in the state courts, or to split their claim and litigate a portion in each forum. Neither rationale comports with commonly accepted legal principles. "A new trial may be granted ... for any of the reasons for which new trials have heretofore been granted in actions at law in the courts of the United States." F.R.Civ.P. 59. Those reasons usually include an erroneous weighing of facts or law that contradicts precedent, not a mere adverse ruling with which the claimant is dissatisfied. See id.; Gasperini v. Center for Humanities, Inc., 518 U.S. 415, 467-468 (1996).

In Williamson County Regional Planning Comm'n v. Hamilton Bank of Johnson City, 473 U.S. 172 (1985), this Court held that if a State provides an adequate procedure for seeking just compensation, the property owner cannot claim a violation of the Just Compensation Clause until it has used the procedure and been denied just compensation. This Court did not address the implications of a determination by the state court that, after considering the regulatory taking factors including the economic impact of the challenged action and the extent to which it interferes with reasonable investment-

backed expectations, the claimant is not entitled to compensation.

England must be read *in pari materia* with this Court's subsequent regulatory taking jurisprudence, particularly Williamson County, where this Court clarified that our system of federalism requires initial litigation of a regulatory taking claim in the State courts. The purpose of initiating litigation challenging an alleged taking in State courts is not merely to develop a factual record, but also to resolve the substantive legal dispute where legally possible. In the typical taking claim, that dispute involves the questions of whether a regulatory taking of property has occurred, and if so the claimant's entitlement to, and the amount of, compensation. See Williamson County, 473, U.S. at 195 and n. 14.

Williamson County did not expand the scope of federal review of State action or of State court decisions. Instead, the Williamson approach reflects the fact that planning, zoning and other local and State land use decisions are essentially local and that state courts should be afforded the opportunity to address their takings implications in the first instance.

Moreover, read together, Williamson County and First English Evangelical Lutheran Church of Glendale v. County of Los Angeles, 482 U.S. 304 (1987), require a state court to adjudicate a federal taking claim. See Roberts, Thomas E., "Procedural Implications of Williamson County/First English in Regulatory Takings Litigation: Reservations, Removal, Diversity, Supplemental Jurisdiction, Rooker-Feldman, and Res Judicata," 31 ELR 10353, 10354 (Apr. 2001). Whether a litigant's presence in state court is "voluntary" or not, the

state court has not only the power but also a mandate, to adjudicate any federal taking claim put before it, while litigating any state law claims.

This Court's Williamson County ripeness requirement does not create an actual Catch-22. See Contra Santini v. Connecticut Haz. Waste Mgmt. Serv., 342 F.3d 118, 127 (2d Cir. 2003), cert. denied, 125 S.Ct. 104 (2004). It is perfectly fair, and consistent with our federalist court system, for state courts to address federal issues in the takings context, with ultimate review by this Court. Suggestions to the contrary imply either that state courts improperly apply federal standards, or that every claimant has a *per se* right to litigate every federal claim in federal court. Both implications are incorrect. State trial court decisions are subject to review by the superior courts in each state, providing another level of review and protection of a clamant's rights; ultimately, of course, this Court sits as the final appellate court for decisions of the highest state courts.

The ripeness requirement of Williamson County is not a "procedural trap" as some courts have suggested, but an opportunity to promote comity by avoiding duplicative litigation where a state court may consider and resolve claims under state and federal law. See Allen v. McCurry, 449 U.S. at 96; Peduto v. City of N. Wildwood, 878 F.2d 725, 729 (3d Cir. 1989) (Williamson ripeness requirement is insufficient to preclude application of *res judicata* and collateral estoppel principles in this case). Consistent with our federalist system, the Full Faith and Credit Clause requires the federal courts to give claim preclusive effect to state laws that prohibit claim splitting. See Peduto, 878 F.2d at 727-28 & n.1&2; R. 4:30A (New Jersey entire controversy court rule prohibiting claim

splitting); Woodward-Clyde Consultants v. Chemical and Pollution Sciences, Inc., 105 N.J. 464 (1987). Moreover, state courts are the appropriate forum to adjudicate state and local land use decisions. "[R]egulation of land use [] is perhaps the quintessential state activity." FERC v. Mississippi, 456 U.S. 742, 767 n.30 (1982). The Eleventh Amendment also weighs against claimants litigating their federal taking claims against the States in federal court.

Thus, a claimant's litigating both state and federal claims in the state courts in the first instance is not only consistent with well-established legal principles, but is a desirable course. Under Williamson County, the state courts will have the initial opportunity to adjudicate the merits of the regulatory taking claim. If the state-law standards for compensation are equivalent to the federal-law taking standards, then all issues material to the taking claim will have been resolved in the state court litigation and there will be no need for this claim to advance to the federal court. The result of that adjudication is subject to review by the superior courts of that state and, if appropriate, by this Court.

3. THE LOWER FEDERAL COURTS LACK SUBJECT MATTER JURISDICTION TO REVIEW PETITIONERS' FEDERAL TAKING CLAIM.

As set forth in more detail in the Statement of the Case, as well as in the decisions of the California Supreme Court in San Remo Hotel v. City and County of San Francisco, 27 Cal.4th 643 (2002) and the Ninth Circuit Court of Appeals in San Remo Hotel v. San Francisco City and County, 364 F.3d 1088 (2004), petitioners' as-applied and facial taking claims, arising under the Fifth and Fourteenth

Amendments to the United States Constitution ("federal taking claim" or "Just Compensation Clause claim"), were reviewed and ruled upon by a state court of competent jurisdiction.[1] Consequently, the district court and the Ninth Circuit lacked subject matter jurisdiction to adjudicate the claims.

The California Supreme Court in San Remo merely acknowledged that petitioners reserved their "substantially advances" claim for litigation in the federal court. However, the California courts were empowered to hear and review federal takings claims. Petitioners have suggested incorrectly, Brief for Petitioners at 9, that, in the ordinary course, the California state courts lack the ability to review the federal takings claims put before them, and that this Court may not review the taking decisions of the California Supreme Court. Petitioners rely upon Breneric Associates v. City of Del Mar, 81 Cal.Rptr.2d 324, 338-339 (Cal. Ct. App. 1998); however, Breneric did not make that far-reaching statement. Instead, Breneric reiterated the ripeness requirement of Williamson County while implicitly recognizing that a takings claimant could litigate a ripe federal taking claim in the California state courts. Id.

Once a state court of competent jurisdiction has reviewed and ruled under state law upon the issues that are material to a federal claim, the lower federal courts lack

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[1]This brief addresses only the question certified by the Court: "Is a Fifth Amendment takings claim barred by issue preclusion based on a judgment denying compensation solely under state law, which was rendered in a state court proceeding that was required to ripen the federal takings claim?" Further, Lingle v. Chevron, No. 04-163, now pending before the Court, may render unnecessary any decision on the substantially advance claim, to the extent it still exists in this case.

subject matter jurisdiction over that claim. See District of Columbia Court of Appeals v. Feldman, 460 U.S. 462 (1983) and Rooker v. Fidelity Trust Co., 263 U.S. 413 (1923). Section 1257 of Title 28 of the United States Code vests federal appellate jurisdiction over judgments of the highest state courts in the United States Supreme Court. 28 U.S.C. § 1257. Only this Court exercises appellate jurisdiction over state courts. See Rooker, 263 U.S. at 416.

> Under the legislation of the Congress, no court of the United States other than this court could entertain a proceeding to reverse or modify the judgment [of an Indiana circuit court that was subsequently affirmed by that state's highest court] for errors of [a federal constitutional] character. To do so would be an exercise of appellate jurisdiction. The jurisdiction possessed by the District Courts is strictly original.

Rooker, 263 U.S. at 416 (internal cites omitted); see also Feldman, 460 U.S. at 482 ("a United States District Court has no authority to review final judgments of a state court in judicial proceedings. Review of such judgments may be had only in this Court"). Moreover, as this Court has long held, the district courts also lack subject matter jurisdiction to review constitutional claims "inextricably intertwined" with the claims resolved by the state court. See Feldman, 460 U.S. at 483, n.16. An inferior federal court lacks subject matter jurisdiction over any claim that would essentially require it to "review the state- court decision." Feldman, 460 U.S. at 483 n.16.

Significantly, however, a federal taking claim arising

under the Just Compensation Clause of the United States Constitution is not ripe until the claim for compensation has been adjudicated in a state court. See Williamson County, 473 U.S. at 194-95. A district court confronted with such an unripe claim must dismiss it for lack of subject matter jurisdiction. See, e.g., Metzger v. Village of Cedar Creek, 370 F.3d 822, 823-24 (8th Cir. 2004) (affirming dismissal of claims unripe under Williamson for lack of subject matter jurisdiction pursuant to F.R.Civ.P. 12(b)(1)); Sprint Spectrum, L.P. v Carmel, 361 F.3d 998 (7th Cir 2004) (same).

Because "a challenge under the Rooker-Feldman doctrine is for lack of subject matter jurisdiction," see Moccio v. New York State Office of Court Admin., 95 F.3d 195, 198 (2d Cir. 1996),[2] there simply is nothing to "reserve" in federal court before a claim for compensation has been presented to and decided by a state court.

Subject matter jurisdiction does not exist in such a situation because the Just Compensation Clause imposes only

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[2]Accord Crutchfield v. Countrywide Home Loans, 389 F.3d 1144, 1148 (10th Cir. 2004) (lower federal courts lack subject matter jurisdiction to review an issue "actually decide[d] by a state court"); Frederiksen v. City of Lockport, 384 F.3d 437, 439 (7th Cir. 2004)("the right disposition, when the Rooker-Feldman doctrine applies, is an order under F.R.Civ.P. 12(b)(1) dismissing the suit for lack of subject matter jurisdiction"); Walker v. Horn, 385 F.3d 321, 329 (3d Cir. 2004) (same); Howard v. Whitbeck, 382 F.3d 633 638-29 (6th Cir. 2004) (Rooker-Feldman denies subject matter jurisdiction as to claims "arising directly from the state court's judgments, and those which allege an injury predating the state-court's judgments but which are still 'inextricably intertwined' with state-court judgments"); Bianchi v. Rylaarsdam, 334 F.3d 895, 898 (9th Cir. 2003) (Rooker-Feldman deprives lower federal courts of subject matter jurisdiction to preclude "second-guessing state court decisions"), cert. denied, 540 U.S. 1213 (2004).

a conditional limitation upon the states' police powers: a taking of private property is permissible as long as the government provides just compensation for such appropriated property. See First English, 482 U.S. at 314. Thus, unlike claims that could be presented in either state or federal court, see, e.g., Kremer v. Chemical Constr. Corp., 456 U.S. 461 (1982) (employment discrimination claim litigated voluntarily in state court precluded subsequent litigation on same issue in federal court), the taking claimant must proceed in state court first as an element of its federal claim. A federal taking claim does not exist until that process is complete.

The Fifth Amendment has been held to be self-executing, enforceable through adjudication in the state courts. Thus, state inverse condemnation suits do not provide only the just compensation required under state law. Rather, such suits are a method of obtaining the just compensation required by the Fifth and Fourteenth Amendments. See First English, 482 U.S. at 315 (internal quotation omitted). Since state courts must adjudicate federal claims, see, e.g.,id.; Idaho v. Coeur d'Alene Tribe of Idaho, 521 U.S. 261, 275-75 (1997); Stone v. Powell, 428 U.S. 465, 494 n. 35 (1976), but see Santini, 342 F.3d at 130 & n.7, the state court review necessary to determine the state law compensation claim and to ripen a federal Just Compensation Clause claim effectively resolves both claims and precludes review by a district court of either claim.

This is the alleged "Catch-22" in which litigants find themselves. See, e.g., Santini, 342 F.3d at 127. In fact, however, there is no Catch-22. A Catch-22 would exist only if litigants were otherwise entitled to federal court review of a claim arising under the federal Just Compensation Clause and were (wrongly) deprived of that opportunity. But,

contrary to the position urged by petitioners, there simply is no entitlement to federal court review of a federal constitutional claim. See Migra, 465 U.S. at 83-85; Allen, 449 U.S. at 103-104; see generally "The Federalist Dimension of Regulatory Takings Jurisprudence," 114 Yale L.J. 203.

In this case, it is undisputed that petitioners' takings claims "were fully litigated in the state court." 364 F.3d 1088; see also Brief for Petitioners at 8 ("the California courts rejected the Field Brothers' claims under state law"). As the district court properly held and the Ninth Circuit affirmed, "the substantive California takings law was coextensive with federal takings law." 364 F.3d at 1094; see also id. at 1096-1098. Moreover, petitioners' "facial and as-applied takings challenges raised in the state court are identical to the federal claims asserted by the plaintiffs, and are based on the same factual allegations." 364 F.3d at 1096. Because the claims were identical, the California courts correctly applied co-extensive state law to identical claims and the state court decision "was a final decision on the merits" in an action to which petitioners were a party, the inferior federal courts lack subject matter jurisdiction to conduct what would in essence be appellate review. All issues material to petitioners' state-law compensation claim and federal-law taking claim have been fully and fairly litigated under equivalent legal standards, and therefore have been resolved. There is no legal basis to relitigate the same claims in the district court.

CONCLUSION

The *amici curiae* States of New Jersey, Colorado, Delaware, Hawaii, Maryland, Missouri, Montana, Oklahoma and West Virginia respectfully ask that this Court affirm the holding below of the United States Court of Appeals for the Ninth Circuit.

Respectfully submitted,

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